

NOTIFICATION.

No. L.D. 982—Legis. 3-52-10, Bangalore, dated 30th August 1952.

Ordered that the Estate Duty Bill, 1952 (Central Bill No. 92 of 1952), which was introduced in the House of the People on 11th August 1952 and published in the *Gazette of India*, Part II, Section 2, dated the 16th August 1952, be republished in the *Mysore Gazette*, for general information

By Order of His Highness the Maharaja,

N. R. JAYA RAO,

*Legal Remembrancer and
Secretary to Government,
Law Department.*

GOVERNMENT OF INDIA.

HOUSE OF THE PEOPLE.

• *New Delhi, dated Saturday, 16th August 1952.*

The following Bill was introduced in the House of the People on 11th August, 1952:—

BILL* NO. 92 OF 1952

A Bill to provide for the levy and collection of an estate duty.

BE it enacted by Parliament as follows:—

PART I.—PRELIMINARY.

1. **Short title, extent and commencement.**—(1) This Act may be called the Estate Duty Act, 1952.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. **Definitions.**—In this Act, unless the context otherwise requires,—

(1) "affidavit of valuation" means the affidavit of valuation made under section 19-I of the Court-fees Act, 1870 (VII of 1870), in connection with an application for the grant of representation;

(2) "Board" means the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924 (IV of 1924);

(3) "company" includes any body corporate wheresoever incorporated;

(4) "controlled company" means a company which is deemed to be controlled by virtue of the rules made under sub-section (4) of section 17;

* The President has, in pursuance of clause (1) of article 117 and clause (1) of article 274 of the Constitution of India, recommended to the House of the People the introduction of the Bill.

(5) "Controller" means a person appointed to be a Controller of Estate Duty under section 4 and includes a person appointed to be a Deputy Controller of Estate Duty or an Assistant Controller of Estate Duty;

(6) "deceased person" and "the deceased" mean a person dying after the commencement of this Act;

(7) "estate duty" means estate duty under this Act;

(8) "executor" means the executor or administrator of a deceased person and includes, as regards any obligation under this Act, any person who takes possession of, or intermeddles with, the estate of a deceased person or any part thereof;

(9) "general power" includes every power or authority enabling the donee or other holder thereof to appoint or dispose of property as he thinks fit, whether exercisable by instrument *inter vivos* or by will or both, but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself or exercisable as mortgagee;

(10) "incumbrances" includes mortgages and terminable charges;

(11) "interest in expectancy" includes an estate in remainder or reversion and every other future interest whether vested or contingent, but does not include reversions expectant upon the determination of leases;

(12) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased, and also includes, in the case where the deceased was a coparcener of a Hindu family, the manager for the time being of the family;

(13) "power to appoint property" means power to determine the disposition of property of which the person invested with the power is not the owner;

(14) "prescribed" means prescribed by rules made under this Act;

(15) "property" includes any interest in property, movable or immovable, and the proceeds of sale thereof and any money or investment for the time being representing the proceeds of sale;

Explanation 1.—The creation by a person or with his consent of a debt or other right enforceable against him personally or against property which he was or might become competent to dispose of, or to charge or burden for his own benefit, shall be deemed to have been a disposition made by that person, and in relation to such a disposition, the expression "property" shall include the debt or right created.

Explanation 2.—The extinguishment at the expense of the deceased of a debt or other right shall be deemed to have been a disposition made by the deceased in favour of the person for whose benefit the debt or right was extinguished, and in relation to such a disposition the expression "property" shall include the benefit conferred by the extinguishment of the debt or right.

(16) "property passing on the death" includes property passing either immediately on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and "on the death" includes "at a period ascertainable only by reference to the death";

(17) "representation" means probate of a will or letters of administration;

(18) "settled property" means property which stands limited to, or in trust for, any persons, natural or juridical, by way of succession, whether the settlement took effect before or after the commencement of this Act; and "settlement" means any disposition, including a dedication or endowment, whereby property is settled;

(19) "Valuer" means a Valuer appointed under section 4.

3. Interpretation.—(1) For the purposes of this Act—

(a) a person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were *sui juris*, enable him to dispose of the property ;

(b) a person shall be deemed to dispose of property to which he has acquired title, even if he has acquired title to it in one form and disposes of it in another ;

(c) a disposition taking effect out of the interest of the deceased shall be deemed to have been made by him, whether the concurrence of any other person was or was not required ;

(d) money which a person has a general power to charge on the property of another person shall be deemed to be an interest in that property of which the former has power to dispose ;

(e) the domicile of a person shall be determined as if the provisions of the Indian Succession Act, 1925 (XXXIX of 1925), on the subject applied to him

(2) In Parts II and III of this Act, any reference to any interest disposed of, policy of insurance effected, annuity or other interest purchased or provided or to any gift, settlement, disposition or transfer of property made, shall be construed as including any such interest, policy, annuity, gift, settlement or disposition, as the case may be, whether it was disposed of, effected, purchased or provided, or made before or after the commencement of this Act.

4. Estate duty authorities.—(1) There shall be the following authorities for the purposes of this Act, namely :—

(a) the Board.

(b) Controllers of Estate Duty.

(c) Valuers.

(2) The Central Government may appoint as many Controllers of Estate Duty as it thinks fit and they shall, subject to the control of the Board, perform their functions in respect of such estates or classes of estates and such areas as are assigned to them by the Board.

(3) The Central Government shall, within twelve months after the commencement of this Act and may thereafter from time to time, appoint a sufficient number of qualified persons to act as Valuers for the purposes of this Act and shall fix a scale of charges for the remuneration of such persons.

(4) Subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, a Controller may appoint such executive or ministerial staff as may be necessary to assist him in the execution of his functions.

(5) All officers and persons employed in the execution of this Act, other than Valuers, shall observe and follow the orders, instructions and directions of the Board.

PART II.—IMPOSITION OF ESTATE DUTY

Extent of charge

5. **Levy of estate duty.**—(1) In the case of every person dying after the commencement of this Act, there shall, save as hereinafter expressly provided, be levied and paid upon the principal value ascertained as hereinafter provided of all property, settled or not settled, including agricultural land situate in the States specified in the Schedule to this Act, which passes on the death of such person, a duty called "estate duty" at the rates fixed in accordance with section 34.

(2) The Central Government may, by notification in the Official Gazette, add the names of any other States to the Schedule in respect whereof resolutions have been passed by the Legislatures of those States that Parliament may legislate in respect of estate duty on agricultural lands situate in those States, and on the issue of any such notification the States so added shall be deemed to be States specified in the Schedule within the meaning of sub-section (1).

Property which is deemed to pass

6. Property within disposing capacity.—Property which the deceased was at the time of his death competent to dispose of shall be deemed to pass on his death.

7. Interests ceasing on death.—(1) Subject to the provisions of this section, property in which the deceased or any other person had an interest ceasing on the death of the deceased shall be deemed to pass on the deceased's death to the extent to which a benefit accrues or arises by the cesser of such interest, including, in particular, a coparcenary interest in the joint family property of a Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law.

(2) If a member of a Hindu coparcenary governed by the Mitakshara school of law dies, then the provisions of sub-section (1) shall not apply with respect to the interest of the deceased in the coparcenary property unless the deceased had completed his eighteenth year, or unless, at the time of his death, his father or other male ascendant in the male line was not a coparcener of the same family.

Explanation.—Where the deceased was also a member of a sub-coparcenary (within the coparcenary) possessing separate property of its own, the provisions of this sub-section shall have effect separately in respect of the coparcenary and the sub-coparcenary.

(3) If a member of any *tarwad* or *tavazhi* governed by the Marumakkattayam rule of inheritance or a member of a *kutumba* or *kavaru* governed by the Aliyasantana rule of inheritance dies, then the provisions of sub-section (1) shall not apply with respect to the interest of the deceased in the property of the *tarwad*, *tavazhi*, *kutumba* or *kavaru*, as the case may be, unless the deceased had completed his eighteenth year.

(4) The provisions of sub-section (1) shall not apply to the property in which the deceased or any other person had an interest only as holder of an office or recipient of the benefits of a charity, or as a corporation sole.

8. Gifts mortis causa.—Property taken as a gift made in contemplation of death shall be deemed to pass on the donor's death.

Explanation.—In this section, the expression "gift made in contemplation of death" has the same meaning as in section 191 of the Indian Succession Act, 1925 (XXXIX of 1925).

9. Gifts within a certain period before death.—Property taken under a disposition made by the deceased purporting to operate as an immediate gift *inter vivos* whether by way of transfer, delivery, declaration of trust, settlement upon persons in succession, or otherwise, which shall not have been *bona fide* made two years or more before the death of the deceased shall be deemed to pass on the death:

Provided that in the case of gifts made for public charitable purposes the period shall be six months.

10. Gifts whenever made where donor not entirely excluded.—Property taken under any gift, whenever made, shall be deemed to pass on the donor's death to the extent that *bona fide* possession and enjoyment of it was not immediately assumed by the donee and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise;

Provided that the property shall not be deemed to pass by reason only that it was not, as from the date of the gift, exclusively retained as aforesaid, if, by means of the surrender of the reserved benefit or otherwise, it is subsequently enjoyed to the entire exclusion of the donor or of any benefit to him for at least two years before the death.

11. Limited interests disposed of within a certain period before death.--

(1) Subject to the provisions of this section, where an interest limited to cease on a death has been disposed of or has determined whether by surrender, assurance, divesting, forfeiture or in any other manner (except by the expiration of a fixed period at the expiration of which the interest was limited to cease), whether wholly or partly, and whether for value or not, after becoming an interest in possession,—

(a) if apart from the disposition or determination the property in which the interest subsisted would have passed on the death under section 5, that property shall be deemed by virtue of this section to be included as to the whole thereof in the property passing on the death; or

(b) if apart from the disposition or determination the property in which the interest subsisted would have been deemed by virtue of section 7 to be included to a particular extent in the property passing on the death, the property in which the interest subsisted shall be deemed by virtue of this section to be included to that extent in the property passing on the death.

(2) Where the relevant disposition or determination was *bona fide* effected or suffered not less than two years before the death (or, if it was effected or suffered for public charitable purposes, not less than six months before the death), the preceding sub-section shall not have effect—

(a) if *bona fide* possession and enjoyment of the property in which the interest subsisted was assumed immediately thereafter by the person becoming entitled by virtue of or upon the disposition or determination and thenceforward retained to the entire exclusion of the person who had the interest and of any benefit to him by contract or otherwise: or

(b) in the case of a partial determination, if the conditions specified in the preceding paragraph were not satisfied by reason only of the retention or enjoyment by the deceased of possession of some part of the property, or of some benefit, by virtue of the provisions of the instrument under which he had the interest:

Provided that nothing in this sub-section shall be construed as affecting any charge of estate duty arising otherwise than by virtue of the provisions of the preceding sub-section.

(3) In the application of sub-section (1) to a case in which an incumbrance on the property in which the interest in question subsisted has been created by associated operations (as hereinafter defined in section 26) which included a disposition of that interest, references to that property shall be construed as references to that property free from the incumbrance, except in a case in which the incumbrance was created for consideration in money or money's worth which was applied for purposes calculated to maintain or increase the value of that property, and, in that case, shall be construed as references to that property subject to the incumbrance to the extent to which the consideration was so applied.

12. Settlements with reservation.—Property passing under any settlement made by the deceased by deed or any other instrument not taking effect as a will whereby an interest in such property for life or any other period determinable by reference to death is reserved either expressly or by implication to the settler or whereby the settler may have reserved to himself the right by the exercise of any power, to restore to himself or to reclaim the absolute interest in such property shall be deemed to pass on the settler's death.

Explanation.—A settlor reserving an interest in the settled property for the maintenance of any of his relatives (as defined in section 26) or of himself and any of his relatives shall be deemed to reserve an interest for himself within the meaning of this section.

13. Joint investments.—Where a person, having been absolutely entitled to any property or to the funds with which any property was purchased, has caused it to be transferred to or vested in himself and any other person jointly, whether by disposition or otherwise, either by himself alone, or in concert, or by arrangement, with any other person so that the beneficial interest in some part of that property passes or accrues by survivorship on his death to the other person, the whole of that property shall be deemed to pass on the death.

14. Policies kept up for a donee.—(1) Money received under a policy of insurance effected by any person on his life, where the policy is wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit, shall be deemed to pass on the death of the assured.

Explanation.—A policy of insurance on the life of a deceased person effected by virtue or in consequence of a settlement made by the deceased shall be treated as having been effected by the deceased.

(2) For the purposes of sub-section (1), so much of the premiums paid on any policy of insurance as was, by virtue or in consequence of a settlement made by the deceased, paid out of property, whether or not provided by the deceased, comprised in the settlement or out of income, whether or not provided by the deceased, arising under the settlement, shall be treated as having been paid by the deceased:

Provided that any payments which were not made either out of property provided directly or indirectly by the deceased for the purposes of the settlement, or out of property representing that property, or out of income provided directly or indirectly by the deceased whether arising from such property or otherwise, shall not be treated as having been made by the deceased if the Controller is satisfied that those payments were not made as part of any reciprocal arrangements between the deceased and any other person.

(3) For the purposes of this section,—

(a) the expression "settlement" includes any disposition, trust, covenant, agreement or arrangement; and

(b) a person shall be deemed to have made a settlement if he has made or entered into the settlement directly or indirectly, and in particular (but without prejudice to the generality of the foregoing words of this clause) if he has provided or undertaken to provide funds directly or indirectly for the purposes of the settlement, or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement.

15. Annuity or other interest purchased or provided by the deceased.—Any annuity or other interest, including moneys payable under a policy of life assurance, purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person shall be deemed to pass on his death to the extent of the beneficial interest accruing or arising, by survivorship or otherwise, on his death.

Explanation.—The extent of the beneficial interest must be ascertained without regard to any interest in expectancy which the beneficiary may have had therein before the death.

16. Annuity or other interest purchased or provided out of property derived from the deceased.—(1) Section 15 shall have effect in relation to any annuity or other interest that was purchased or provided wholly or in part by any person who was at any time entitled to; or amongst whose resources there was at any time included, any property derived from the deceased, as if that annuity or other interest had been provided by the deceased, or, if it is proved to the satisfaction of the Controller that the application of all the property derived from the deceased would have been insufficient to provide the whole of that annuity or other interest, as if a similar annuity or interest of an amount reduced to an extent proportionate to the insufficiency proved had been provided by the deceased :

Provided that for the purpose of determining whether there would have been any such insufficiency as aforesaid, and the extent thereof, there shall be excluded from the property derived from the deceased any part thereof as to which it is proved to the satisfaction of the Controller that the disposition of which it, or the property which it represented, was the subject-matter, was not made with reference to or with a view to enabling or facilitating, the purchase or provision of the annuity or other interest, or the recoupment in any manner of the cost thereof.

(2) In this section the following expressions have the meanings hereby assigned to them respectively, namely :—

(a) "property derived from the deceased" means any property which was the subject-matter of a disposition made by the deceased, either by himself alone or in concert or by arrangement with any other person, otherwise than for full consideration in money or money's worth paid to him for his own use or benefit, or which represented any of the subject-matter of such a disposition, whether directly or indirectly, and whether by virtue of one or more intermediate dispositions and whether any such intermediate disposition was or was not for full or partial consideration :

Provided that where the first-mentioned disposition was for full consideration in money or money's worth paid to the deceased for his own use or benefit and it is proved to the satisfaction of the Controller that the disposition was not part of associated operations which included—

(a) a disposition by the deceased, either by himself alone or in concert or by arrangement with any other person, otherwise than for full consideration in money or money's worth paid to the deceased for his own use or benefit ; or

(b) a disposition by any other person operating to reduce the value of the property of the deceased ;

then, in considering whether estate duty should be charged the said first mentioned disposition shall be left out of account as if this provision did not apply in relation to it ;

(b) "disposition" includes any trust, covenant, agreement or arrangement ; and

(c) "subject-matter" includes, in relation to any disposition, any annual or periodical payment made or payable under or by virtue of the disposition.

(3) For the purpose of section 33 the deceased shall be deemed to have had an interest in any property included by virtue of this section in the property passing on the death of the deceased.

Special provisions relating to transfers to companies.

17. Property transferred to a controlled company.—(1) Where the deceased has made to a controlled company a transfer of any property (other than an interest limited to cease on his death or property which he transferred in a fiduciary capacity), and any benefits accruing to the deceased from the company accrued to him in the

three years ending with his death, the assets of the company shall be deemed for the purposes of estate duty to be included in the property passing on his death to an extent determined in accordance with sub-section (2).

(2) The extent to which the assets of the company are to be deemed to be included as aforesaid shall be the proportion ascertained by comparing the aggregate amount of the benefits accruing to the deceased from the company in the last three accounting years with the aggregate amount of the net income of the company for the said years :

Provided that—

(a) where, in any of the said accounting years, the company sustained a loss, the amount that loss shall be deducted in ascertaining and said aggregate net income of the company ;

(b) where the company came into existence in the last year but one, or in the last, of the said accounting years, the references in this sub-section to the said accounting years shall be construed as references to the last two, or, as the case may be, the last, of those years.

(3) The assets of the company which are deemed to be included in the property passing on the death of the deceased by virtue of this section shall include any assets thereof which have been disposed of or distributed by the company at any time between the beginning of the first of the accounting years aforesaid and the death of the deceased either—

(a) in or towards satisfaction of rights attaching to shares in or debentures of the company, or

(b) otherwise howsoever except as follows, that is to say, by way of sale for full consideration in money or money's worth received by the company for its own use and benefit, or in or towards discharge of taxes or rates or other liability imposed by or under an enactment, or in or towards discharge of a fine or penalty or a liability for tort incurred without collusion with the injured party, including assets which have been so disposed of or distributed in a winding up, whether continuing at or completed before the death :

Provided that this sub-section shall not apply to assets disposed of or distributed by way of payments from which income-tax was deductible, or which were assessable to income-tax, of amounts not exceeding in the aggregate, as respects payments made in any accounting year or in the period between the end of the last accounting year and the death of the deceased the amount of the income of the company for that year or period.

(4) The Board may make rules—

(a) prescribing the class of companies which shall be deemed to be controlled companies and the class of dispositions or operations which shall be deemed to be transfers ;

(b) prescribing the matters to be treated as benefits accruing to the deceased from such a company, the manner in which their amount is to be determined, and the time at which they are to be treated as accruing ;

(c) prescribing the manner in which the net income and the value of the assets of such a company are to be determined ;

(d) prescribing the manner in which the accounting year is to be reckoned ;

(e) prescribing the manner in which the shares and debentures of such a company passing upon the death of the deceased or to be valued for estate duty ;

(f) prescribing the conditions upon which and the extent to which transactions in the name of such a company shall be deemed to be *bona fide* transactions for full consideration ; and

(g) generally for the purpose of checking the avoidance of estate duty through the machinery of such a company :

Provided that all rules made under this sub-section shall be laid before the House of the People not less than fifteen days before the date of their final publication.

(5) For the purposes of section 33 the deceased shall be deemed to have had an interest in the property deemed by virtue of this section to be included in the property passing on his death.

18. Duty of company and officers of company to give information to Controller on death of transfer or.—(1) where the deceased has made a transfer of property to a controlled company as described in section 17 the company shall be under obligation to inform the Controller within one month from the date of the death of the deceased, of the death, of the fact that the deceased made a transfer of property to the company, and of the fact that benefits accrued to the deceased from the company, and every person who was an officer of the company at that date, or if the company has been wound up and dissolved before that date, who was an officer of the company at any time, shall be under the like obligation as respects such of the facts aforesaid as are within his knowledge, unless he knows, or has reasonable cause for believing, that the information in question has already been given to the Controller by the company or some other person.

(2) If the company or any such person as aforesaid who is under obligation by virtue of the preceding sub-section to give any information to the Controller makes default in the performance of that obligation, the Controller may impose upon the defaulter a penalty not exceeding one thousand rupees.

19. Collection and incidence of duty under section 17.—(1) The following persons shall be accountable for the duty payable on the death of the deceased by virtue of section 17, namely :—

(a) the company ;

(b) any person (other than a *bona fide* purchaser for full consideration in money or money's worth received by the company for its own use and benefit) who receives, whether directly from the company or otherwise, or disposes of, any assets which the company had whether as capital or as income, at the death or at any time thereafter ;

(c) any person who received any distributed assets of the company on their distribution :

Provided that a person shall not,—

(i) by virtue of clause (b), be accountable in respect of any assets for any duty in excess of the value of those assets, or

(ii) by virtue of clause (c), be accountable in respect of any assets for more than a part of the duty bearing to the whole thereof the same proportion as the value of the distribution of those assets bears to the principal value of the assets of the company passing on the death by virtue of section 17.

Explanation.—For the purposes of this sub-section the expressions “distributed assets” and “assets of the company passing on the death” do not include any distributed assets of the company which the deceased received on their distribution ; and a person who, having received any distributed assets of the company, has died before the deceased shall be deemed to have been a person accountable by virtue of clause (c).

(2) Where a company incorporated outside the territories to which this Act extends is accountable for any duty by virtue of the preceding sub-section or of this sub-section, every person who is a member of that company at the death shall also

be accountable for a rateable part of that duty in proportion to the value of his interest in that company.

(3) A person accountable for any duty by virtue of this section shall, for the purpose of raising and paying the duty, have all the powers conferred on accountable parties.

(4) On a winding up of the company, sub-section (1) of section 230 of the Indian Companies Act, 1913 (VII of 1913), shall have effect as if there were included in clause (a) of that sub-section a reference to any duty payable in respect of assets of the company passing on a death by virtue of section 16 of this Act, and section 129 of the Indian Companies Act, 1913, shall have effect accordingly.

(5) The duty payable on the death of the deceased by virtue of section 17 shall be a first charge by way of floating security on the assets which the company had at the death or has at any time thereafter, and any part of the duty for which by virtue of clause (c) of sub-section (1) any person is accountable in respect of any distributed assets shall be a first charge also on those assets:

Provided that nothing in this sub-section shall operate to make any property chargeable as against a *bona fide* purchaser thereof for valuable consideration without notice.

(6) Where any duty has been—

(a) paid by a person accountable therefor by virtue only of clause (c) of sub-section (1); or

(b) raised by virtue of sub-section (5) out of any distributed assets charged therewith;

that person or, as the case may be, the person who was entitled to those assets subject to the charge, may (without prejudice to any right of contribution or indemnity which he may have apart from this sub-section) recover the amount of the duty so paid or raised as aforesaid from any person who is accountable therefor otherwise than by virtue of the said clause (c).

(7) No part of the duty paid by the company shall be recoverable by it from any person on the ground only that he is entitled to any interest in, or to any sum charged on, the assets which the company had at the death of the deceased.

(8) The provisions of sub-sections (1) and (3) of section 50 shall not have effect in relation to the duty payable by virtue of section 17.

PART III.—EXCEPTIONS FROM THE CHARGE OF DUTY.

20. Foreign Property.—(1) There shall not be included in the property passing on the death of the deceased—

(a) immoveable property situated outside the territories to which this Act extends or immovable property consisting of agricultural land situated in any State other than the States specified in the Schedule to this Act;

(b) movable property situated outside the territories to which this Act extends at the time of the death unless—

(i) in the case of any property, whether settled or not, the deceased was domiciled in the said territories at the time of his death; or

(ii) in the case of settled property of which the deceased was a life tenant, the settlor was domiciled in the said territories at the date the settlement took effect.

(2) The Board may make rule regulating the manner in which the nature and locality of different classes of assets shall be determined for the purposes of this section.

21. Property held by the deceased as trustee.—Property passing on the death of the deceased shall not be deemed to include property held by the deceased as trustee for another person under a disposition not made by the deceased or under a disposition made by the deceased where (whether by virtue of the original disposition or of a subsequent surrender of any benefit originally reserved to the deceased or otherwise) possession and enjoyment of the property was *bona fide* assumed by the beneficiary at least two years before the death and thenceforward retained by him to the entire exclusion of the deceased or of any benefit to the deceased by contract or otherwise.

22. Interest failing before becoming an interest in possession.—In the case of settled property where the interest of any person under the settlement fails or determines by reason of his death before it becomes an interest in possession, and one or more subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass on his death by reason only of the failure or determination of that interest.

Explanation 1.—Where property is settled by a person on himself for life and after his death on any other person, with an ultimate reversion of an absolute interest or absolute power of disposition to the settlor, the property shall not be deemed to pass to the settlor on the death of such other person by reason only that the settlor being then in possession of the property as tenant for life becomes, in consequence of such death, entitled to the immediate reversion or acquires an absolute power to dispose of the whole property.

Explanation 2.—Where the interest of a person in settled property consists of an interest in the residue or part of the residue of an estate of a testator or intestate and the said estate continues to be under administration until the death of the person, the said interest of the person in the residue or part of the residue shall be deemed to have become an interest in possession on the date as from which the income from the residue or part of the residue would have been attributable to that interest if the residue had been ascertained immediately after the death of the testator or intestate.

23. Property reverting to disponent.—(1) Where by disposition of any property an interest is conferred on any person, other than the disponent, for the life of such person or determinable on his death and such person enters into position of the interest, and thenceforward retains position of it to the entire exclusion of the disponent or of any benefit to him by contract or otherwise, and the only benefit which the disponent retains in the property, is subject to such life or determinable interest and no other interest, even contingent, is created by the disposition, then, on the death of such person, the property shall not be deemed to pass by reason only of its reverter to the disponent in his life time.

(2) Where by a disposition of any property any such interest as is mentioned in sub-section (1) is conferred on two or more persons either severally or jointly or in succession, sub-section (1) shall apply in like manner as where the interest is conferred on one person:

Provided that sub-section (1) shall not apply where such person or persons taking the said life or determinable interest had at any time prior to the disposition been himself or themselves competent to dispose of the said property.

24. Income of settled property acquired on death of spouse.—Where a husband or wife is entitled, either solely or jointly with the other, to the income of any property settled by the other under a disposition which took effect before the commencement of this Act and on his or her death the survivor becomes entitled to the income of the property (as distinguished from the property itself) settled by such survivor, estate duty shall not be payable in respect of that property until the death of that survivor.

25. Property passing by reason of a *bona fide* purchase for full or partial consideration in money.—(1) Subject to the provisions of section 26 and section 44 estate duty shall not be payable in respect of property passing on the death of the deceased by reason only of a *bona fide* purchase from the person under whose disposition the property passes, nor in respect of the falling into possession of the reversion any lease for lives, nor in respect of the determination of any annuity for lives, where such purchase was made, or such lease or annuity granted, for full consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee.

(2) Where any such purchase was made, or lease or annuity granted, for partial consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee, the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of estate duty.

26. Dispositions in favour of relatives.—(1) Where a person dying after the commencement of this Act has made a disposition of property in favour of a relative of his, the creation or disposition in favour of the deceased of an annuity or other interest limited to cease on the death of the deceased or of any other person shall not be treated for the purposes of section 25 or section 42 as consideration for the disposition made by the deceased.

(2) If the deceased has made in favour of a controlled company a disposition which, if it had been made in favour of a relative of his, would have fallen within sub-section (1), this section shall have effect in like manner as if the disposition had been made in favour of a relative of his, unless it is shown to the satisfaction of the Controller that no relative of the deceased was, at the time of the disposition or subsequently during the life of the deceased, a member of the company.

Explanation.—For the purposes of this sub-section a person who is, or is deemed by virtue of the provision to be, a member of a controlled company which is a member of another such company shall be deemed to be a member of that other company.

(3) Where there have been associated operations effected with reference to the receiving by the deceased of any payment in respect of such an annuity or other interest as is mentioned in sub-section (1), or effected with a view to enabling him to receive or to facilitating the receipt by him of any such payment, this section shall have effect in relation to each of those associated operations as it has effect in relation to the creation or disposition in favour of the deceased of such an annuity or other interest.

(4) In this section—

(i) "relative" means, in relation to the deceased,—

(a) the wife or husband of the deceased,

(b) the father, mother, children, uncles, and aunts, of the deceased, and

(c) any issue of any person falling within either preceding sub-clauses and the other party to a marriage with any such person or issue;

(ii) reference to "children" and "issue" include reference to illegitimate children and to adopted children;

(iii) "annuity" includes any series of payments, whether inter-connected or not, whether of the same or of varying amounts, and whether payable at regular intervals or otherwise, and payments of dividends or interests on shares in or debentures of a company shall be treated for the purposes of this section



as a series of payments constituting an annuity limited to cease on a death if the payments are liable to cease on the death, or the amounts thereof are liable to be reduced on the death, by reason directly or indirectly of the extinguishment or any alteration of rights attaching to, or of the issue of any shares in or debentures of a company;

(iv) "associated operations" means any two or more operations of any kind being,—

(a) operations which effect the same property, or one of which affects some property and the other or others of which affect property which represents, whether directly or indirectly, that property, or income arising from that property, or any property representing accumulations of any such income; or

(b) any two operations of which one is effected with reference to the other, or with a view to enabling it to be effected or to facilitating its being effected, and any third operation having a like relation to either of those two, and any fourth operation having a like relation to any of those three, and so on;

whether those operations are effected by the same person or by different persons, whether they are connected otherwise than as aforesaid or not, and whether they are contemporaneous or any of them precedes or follows any other.

27. Effect of new or increased rates of duty on certain prior sales and mortgages.—Where an interest in expectancy in any property has, whether before or after the commencement of this Act, been *bona fide* sold or mortgaged for full consideration in money or money's worth, and the rates of estate duty in force in the case of a person dying when the interest falls into possession are higher than the rates in force, if any, in the case of a person dying at the time of the sale or mortgage, then—

(a) no other duty on that property shall be payable by the purchaser or mortgagee when the interest falls into possession than the duty, if any, which would have been payable if the rates of estate duty applicable had been the rates in force, if any, in the case of a person dying at the time of the sale, or mortgage, and

(b) in the case of a mortgage, any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

28. Settled property in respect of which since the date of the settlement estate duty has been paid on the death of the deceased's spouse.—If estate duty has already been paid in respect of any settled property since the date of the settlement, on the death of one of the parties to a marriage, the estate duty shall not be payable in respect thereof on the death of the other party to the marriage, unless the latter was at the time of his death, or had been at any time during the continuance of the settlement, competent to dispose of such property, and, if on his death subsequent limitations under the settlement take effect in respect of such property, was *sui juris* at the time of his death, or had been *sui juris* at any time while so competent to dispose of the property.

29. Agreement for avoidance or relief of double taxation with respect to estate duty.—The Central Government may enter into an agreement with the Government of any reciprocating country for the avoidance or relief of double taxation with respect to estate duty leviable under this Act and under the corresponding law in force in the reciprocating country and may, by notification in the Official Gazette, make such provision as may be necessary for implementing the agreement.

Explanation.—The expression "reciprocating country" for the purposes of this Act means any country which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating country.

30. Allowance for quick succession to land or a business.—Where the Board is satisfied that estate duty has become payable on any property consisting of land or on a business (not being a business carried on by a company) or any interest in such land or business passing upon the death of any person, and that subsequently within five years estate duty has again become payable on the same property or any part thereof passing on the death of the person to whom the property passed on the first death, the amount of estate duty payable on the second death in respect of the property so passing shall be reduced as follows:—

Where the second death occurs within one year of the first death, by 50 per cent.;

Where the second death occurs within two years of the first death, by 40 per cent.;

Where the second death occurs within three years of the first death, by 30 per cent.;

Where the second death occurs within four years of the first death, by 20 per cent.;

Where the second death occurs within five years of the first death, by 10 per cent.;

Provided that where the value on which the duty is payable of the property on the second death exceeds the value on which the duty was payable of the property on the first death, the latter value shall be substituted for the former for the purpose of calculating the amount of duty on which the reduction under this section is to be calculated.

31. Exemption of coparcenary interest of a Hindu widow dying within seven years of her husband's death.—Where on the death of a member of a Hindu coparcenary, his interest in the coparcenary property has devolved on his widow, then, if the widow dies within seven years of her husband's death and the interest aforesaid devolves upon the members of the coparcenary or any of them, no estate duty shall be leviable in respect of the passing of the interest aforesaid on the death of the widow, if and in so far as estate duty had been paid in respect of the passing of such interest on the death of her husband.

32. Exemptions, reductions and other modifications.—The Central Government may, by notification in the Official Gazette, make any exemption, reduction in rate or other modification in respect of estate duty in favour of any class of property or the whole or any part of the property of any class of persons.

PART IV.—AGGREGATION OF PROPERTY AND RATES OF DUTY.

33. Aggregation.—(1) For determining the rate of estate duty to be paid on any property passing on the death of the deceased, all property so passing in respect of which estate duty is leviable shall be aggregated so as to form one estate and the duty shall be levied at the proper graduated rate on the principal value thereof:

Provided that any property so passing, in which the deceased never had an interest, not being a debt or right or benefit that is treated as property by virtue of the *Explanations* to clause (15) of section 2, shall not be aggregated with any other property, but shall be an estate by itself and the estate duty shall be leviable at the proper graduated rate on the principal value thereof.

(2) Every estate shall include all income accrued upon the property included therein down to and outstanding at the date of the death of the deceased.

(3) Property passing on any death shall not be aggregated more than once nor shall estate duty in respect thereof be levied more than once on the same death.

34. Rates of duty to be according to Central Act.—The rates of estate duty shall be according to such scale as may be fixed by an Act of Parliament.

PART V.—VALUE CHARGEABLE.

35. Principal value how to be estimated.—(1) The principal value of any property shall be estimated to be the price which, in the opinion of the Controller it would fetch if sold in the open market at the time of the deceased's death.

(2) In estimating the principal value under this section the Controller shall fix the price of the property according to the market price at the time of the deceased's death and shall not make any reduction in the estimate on account of the estimate being made on the assumption that the whole property is to be placed on the market at one and the same time :

Provided that where it is proved to the satisfaction of the Controller that the value of the property has depreciated by reason of the death of the deceased, the depreciation shall be taken into account in fixing the price.

36. Valuation of shares in a private company where alienation is restricted.—

Where the articles of association of a private company contain restrictive provisions as to the alienation of shares, the value of the shares, if not ascertainable by reference to the value of the total assets of the company, shall be estimated to be what they would fetch if they could be sold in the open market on the terms of the purchaser being entitled to be registered as holder subject to the articles, but the fact that a special buyer would for his own special reasons give a higher price than the price in the open market shall be disregarded.

37. Valuation of interests in expectancy.—Where an estate includes an interest in expectancy, estate duty in respect of that interest shall be paid, at the option of the person accountable for the duty, either with the duty in respect of the rest of the estate or when the interest falls into possession and if the duty is not paid with the estate duty in respect of the rest of the estate, then —

(a) for the purpose of determining the rate of estate duty in respect of the rest of the estate, the value of the interest shall be its value at the date of the death of the deceased ; and

(b) the rate of estate duty in respect of the interest when it falls into possession shall be calculated according to its value when it falls into possession, together with the value of the rest of the estate as previously ascertained.

38. Valuation of benefits from interests ceasing on death.—The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall—

(a) if the interest extended to the whole income of the property, be the principal value of that property ; and

(b) if the interest extended to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended.

39. Valuation to be made by the Controller.—Subject to the provisions of this Act, the value of any property for the purpose of estate duty shall be ascertained by the Controller in such manner and by such means as he thinks fit and if he authorises a person to inspect any property and to report the value thereof for the purposes of this Act, that person may enter upon the property and inspect it at such reasonable times as the Controller considers necessary.

40. Costs of valuation.—Where the Controller requires any person to report on the value of any property for the purposes of this Act, the reasonable costs of such valuation shall be defrayed by the Controller.

41. Controller may accept and certify valuation when convenient.—The Controller on application from a person accountable for the duty on any property forming part of an estate shall, where he considers that it can conveniently be done, certify the amount of the valuation accepted by him for any class or description of property forming part of such estate.

PART VI.—DEDUCTIONS

42. Reasonable funeral expenses and, with some exceptions, debts and incumbrances to be allowed for in determining chargeable value of estate.—In determining the value of an estate for the purpose of estate duty, allowance shall be made for reasonable funeral expenses and for debts and incumbrances; but an allowance shall not be made—

(a) for debts incurred by the deceased, or incumbrances created by a disposition made by the deceased, unless, subject to the provisions of section 26, such debts or incumbrances were incurred or created *bona fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit and take effect out of his interest, or,

(b) for any debt in respect whereof there is a right to reimbursement from any other estate or person, unless such reimbursement cannot be obtained, or,

(c) more than once for the same debt or incumbrance charged upon different portions of the estate,

and any debt or incumbrance for which an allowance is made shall be deducted from the value of the property liable thereto.

43. Limitations on debts deductible.—Where a debt or incumbrance has been incurred or created in whole or in part for the purpose of or in consideration for the purchase or acquisition or extinction, whether by operation of law or otherwise of any interest in expectancy in any property passing or deemed to pass on the death of the deceased and any person whose interest in expectancy is so purchased, acquired, or extinguished becomes (under any disposition made by or through devolution of law from, or under the intestacy of, the deceased) entitled to any interest in that property, then in determining the value of the estate of the deceased for the purpose of estate duty no allowance shall be made in respect of such debt or incumbrance, and any property charged with any such debt or incumbrance shall be deemed to pass freed from that debt or incumbrance:

Provided that—

(a) if part only of such debt or incumbrance was incurred or created for such purpose or as such consideration as aforesaid, this provision shall apply to that part of such debt or incumbrance only; and

(b) if a person whose interest in expectancy in the property so purchased, acquired or extinguished becomes entitled to an interest in part only of that property, this provision shall apply only to such part of the debt or incumbrance as bears the same proportion to the whole debt or incumbrance as the value of the part of the property to an interest in which he becomes entitled bears to the value of the whole of that property.

44. Further limitations.—(1) Any allowance which, but for this provision, would be made under section 42 for a debt incurred by the deceased as mentioned in clause (a) of that section, or for an incumbrance created by a disposition made by

the deceased as therein mentioned, shall be subject to abatement to an extent proportionate to the value of any of the consideration given therefor which consisted of—

- (a) property derived from the deceased; or
- (b) consideration not being such property as aforesaid, but given by any person who was at any time entitled to, or amongst whose resources there was at any time included, any property derived from the deceased :

Provided that if, where the whole or a part of the consideration given consisted of such consideration as is mentioned in clause (b) of this sub-section, it is proved to the satisfaction of the Controller that the value of the consideration given, or of that part thereof, as the case may be, exceeded that which could have been rendered available by application of all the property derived from the deceased, other than such (if any) of that property as is included in the consideration given or as to which the like facts are proved in relation to the giving of the consideration as are mentioned in the proviso to sub-section (1) of section 16 in relation to the purchase or provision of an annuity or other interest no abatement shall be made in respect of the excess.

(2) Money or money's worth paid or applied by the deceased in or towards satisfaction or discharge of a debt or incumbrance in the case of which sub-section (1) would have had effect on his death if the debt or incumbrance had not been satisfied or discharged, or in reduction of a debt or incumbrance in the case of which that sub-section has effect on his death, shall, unless so paid or applied three years before the death, be treated as property deemed to be included in the property passing on the death and estate duty shall notwithstanding anything in section 24, be payable in respect thereof accordingly.

(3) The provisions of sub-section (2) of section 16 shall have effect for the purpose of this section as they have effect for the purpose of that section.

45. Debts to persons resident out of India not to be deducted in first instance except from duty-paid property outside India.—An allowance shall not be made in the first instance for debts due from the deceased to persons resident out of the territories to which this Act extends (unless contracted to be paid in the said territories or charged on properties situate within the said territories), except out of the value of any property of the deceased situate out of the said territories in respect of which estate duty is paid; and there shall be no repayment of estate duty in respect of any such debts, except to the extent to which it is shown to the satisfaction of the Controller that the property of the deceased situate in the foreign country in which the person to whom such debts are due resides is insufficient for their payment.

46. Cost of realising or administering foreign property may be allowed for within certain limits.—Where the Controller is satisfied that any additional expense in administering or in realising property has been incurred by reason of the property being situate out of the territories to which this Act extends, he may make an allowance from the value of the property on account of such expense not exceeding in any case five per cent on the value of the property.

47. Allowance for duty paid in a non-reciprocating country.—Where any property passing on the death of the deceased is situate in a non-reciprocating country and the Controller is satisfied that by reason of such death any duty is payable in that country in respect of that property, he may make an allowance of the whole or any part of the amount of that duty from the value of the property.

Explanation.—In this section, the expression "non-reciprocating country" means any country other than India which has not been declared to be a reciprocating country for the purposes of this Act.

PART VII—COLLECTION OF THE DUTY

48. Method of collection of duty.—Estate duty may be collected by such means and in such manner as the Board may prescribe.

49. Payment of duty may be accepted in prescribed Government securities.—The Board may prescribe that Government securities shall be accepted in payment of estate duty on such terms as it thinks fit.

50. Persons, accountable, and their duties and liabilities.—(1) Where any property passes on the death of the deceased—

(a) every legal representative to whom such property so passes for any beneficial interest in possession or in whom any interest in the property so passing is at any time vested,

(b) every trustee, guardian, committee or other person in whom any interest in the property so passing or the management thereof is at any time vested, and

(c) every person in whom any interest in the property so passing is vested in possession by alienation or other derivative title,

shall be accountable for the whole of the estate duty on the property passing on the death but shall not be liable for any duty in excess of the assets of the deceased which he actually received or which, but for his own neglect or default, he might have received :

Provided that nothing in this section shall render a person accountable for duty who acts merely as agent or bailiff for another person in the management of property.

(2) Notwithstanding anything contained in sub-section (1), where an heir-at-law proves to the satisfaction of the Controller that some other person is in adverse possession of any assets of the deceased, the heir-at-law shall not be accountable for the portion of the estate duty payable in respect of such assets :

Provided that he shall become so accountable if, and to the extent that, he subsequently recovers possessions of such assets.

(3) Every person accountable for estate duty under the provisions of this section shall, within six months of the death of the deceased or such later time as the Controller may allow, deliver to the Controller and verify to the best of his knowledge and belief, an account of all the property in respect of which estate duty is payable.

(4) Where the person accountable knows of any property which he has not included in his account because he does not know its amount or value, he may state that such property exists, but he does not know the amount or value thereof and that he undertakes, as soon as the amount and value are ascertained to bring a supplementary account thereof and to pay both the duty for which he may be liable in respect of such property and any

(5) Where two or more persons are accountable, whether in the same capacity or in different capacities, for estate duty in respect of any property passing on the death of the deceased, they shall be liable jointly and severally for the whole of the estate duty on the property so passing.

51. Every person believed to be in possession to deliver statement of particulars of property as required by Controller.—Every person accountable for estate duty, every company to which, in the opinion of the Controller, a transfer of property has been made by the deceased as mentioned in section 17, every person who is or was at any time an officer or auditor of such a company, and every person whom the Controller believes to have taken possession of or administered any part of the estate in respect of which duty is leviable on the death of the deceased, or of the income of any part of such estate shall, if required by the Controller, deliver to

him and verify, to the best of his knowledge and belief, a statement of such particulars together with such accounts, documents, evidence or information as the Controller may require relating to any property which he has reason to believe to form part of an estate in respect of which estate duty is leviable on the death of the deceased.

52. Penalty for default.—Any person who without reasonable cause has failed to comply with the provisions of section 50 or section 51 or has failed to comply with the said provisions within the time allowed, shall be liable to pay a penalty of one thousand rupees or a sum equal to double the amount of estate duty, if any remaining unpaid for which he is accountable, according as the Controller may direct :

Provided that the Controller may reduce the penalty in any particular case.

53. Executor to specify all chargeable property with affidavit of valuation.—In all cases in which a grant of representation is applied for within six months of the death of the deceased—

(a) the executor of the deceased shall, to the best of his knowledge and belief, specify in an appropriate account annexed to the affidavit of valuation filed in court under section 19-I of the Court-fees Act, 1870 (VII of 1870), all the property in respect of which estate duty is payable upon the death of the deceased and shall deliver a copy of the affidavit with the account to the Controller, and

(b) no order entitling the applicant to the grant of representation shall be made upon his application until he has delivered the account prescribed in clause (a) and has produced a certificate from the Controller under section 55 or section 61 that the estate duty payable in respect of the property included in the account has been or will be paid, or that none is due, as the case may be.

54. Estate duty when due and how and when to be collected.—(1) Estate duty shall be due from the date of the death of the deceased and shall be collected upon the account delivered under section 50 or clause (a) of section 53 or the account prepared under sub-section (2) of section 55.

(2) When any estate duty, penalty, interest or any other sum chargeable under this Act has been determined in consequence of any order passed under or in pursuance of this Act, the Controller shall serve on the person accountable a notice of demand in the prescribed form specifying the sum so payable and the time within which and the place at which it is payable.

55. Duty to be paid or security for payment furnished on delivery of account and certificate to be granted thereupon.—Upon delivery of the account under section 50 or clause (a) of section 53, the person delivering it shall pay to the Controller, or furnish security to the satisfaction of the Controller for the payment of, the estate duty, if any, payable in respect of the property included in the account, and the Controller shall thereupon grant him a certificate that such duty has been or will be paid, or that none is due, as the case may be.

56. Controller's powers in respect of valuations.—(1) If the Controller is of opinion that the person delivering the account has under-estimated the value of the property in respect of which estate duty is payable (whether by placing too low a value on the property included in the account or by omitting to include therein property that ought to have been included), the Controller may inquire into the matter in such manner and by such means as he thinks fit and, if still of opinion that the value of the property has been under-estimated, may require him to amend the valuation, and if that person does not amend the valuation to the satisfaction of the Controller the Controller may determine the valuation on the basis of which estate duty is payable.

(2) In any case where no account has been delivered as required by section 50 or clause (a) of section 53, the Controller may cause an account of the property passing on the death of the deceased to be prepared in such manner and by such means as he thinks fit and may call upon any person who in his opinion is accountable for the payment of estate duty in respect of the property to accept such account, and if that person does not accept the account or his liability, the Controller may determine the estate duty payable by that person.

Appeal against determination by Controller.—(1) Any person objecting to the valuation made or the estate duty determined by the Controller of denying his liability to account for the duty payable in respect of any property, may, within ninety days of the receipt of the notice of demand under section 54, appeal to the Board in the prescribed form and verified in the prescribed manner.

(2) The Board may admit an appeal after the expiry of ninety days referred to in sub-section (1) if it is satisfied that there was sufficient cause for not presenting it within that period.

(3) The Board may, in disposing of any appeal hold or cause to be held such further inquiry as it thinks fit, and after giving the appellant an opportunity of being heard, pass, subject to the provisions of sub-section (4) such orders thereon as it thinks fit and shall send a copy of such orders to the appellant and the Controller.

(4) Where the dispute pertains to the valuation of any property, the appellant may require the Board to refer the question of disputed value to the arbitration of the Valuers, and the cost of such arbitration shall be paid by the appellant.

(5) Notwithstanding that an appeal has been filed before the Board, so much of the estate duty as is not in dispute shall be payable by the appellant.

58. Statement of case by the Board to High Court.—(1) Within ninety days of the date upon which he is served with an order under sub-section (3) of section 57, the person accountable may present an application to the Board in the prescribed form, accompanied by a fee of five hundred rupees, requiring the Board to refer to the High Court any question of law arising out of such order, and the Board shall, if in its opinion a question of law arises out of such order, state the case for the opinion of the High Court:

Provided that the Board may admit such an application after the expiry of ninety days if it is satisfied that there was sufficient cause for not presenting it within the said period.

(2) If, on an application made under sub-section (1), the Board—

(a) refuses to state a case on the ground that no question of law arises or

(b) rejects it on the ground that it is time-barred, the person accountable may, within three months from the date on which he is served with a notice of refusal or rejection, as the case may be, apply to the High Court, and the High Court may, if it is not satisfied with the correctness of the decision of the Board, require the Board to state the case to the High Court and on receipt of such requisition the Board shall state the case:

Provided that if, in any case where it has been required by a person accountable to state a case, the Board refuses to do so on the ground that no question of law arises, such person may within thirty days from the date on which he receive notice of the refusal to state the case, withdraw his application and if he does so the fee paid by him under sub-section (1) shall be refunded.

(3) Section 5 of the Indian Limitation Act, 1908 (IX of 1908) shall apply to an application to the High Court under sub-section (2).

(4) If, on an application made under sub-section (1), the Board is of opinion that either on account of the importance of any question of law involved in the case or on account of a conflict in the decisions of different High Courts in respect of any particular question of law arising therefrom, it is expedient that a case should

be stated direct to the Supreme Court, the Board may state the case direct to the Supreme Court.

(5) The case shall set forth the facts, the determination of the Board and the questions of law which arise out of the case.

(6) If the High Court or the Supreme Court is not satisfied that the case as stated is sufficient to enable it to determine the questions of law raised thereby, the Court may require the Board to make such additions thereto, or alterations therein, as it may direct in this behalf.

(7) The High Court or the Supreme Court upon hearing any such case shall decide the question of law raised therein and in doing so may, if it thinks fit, alter the form of the question of law and shall deliver its judgment thereon containing the ground on which such decision is founded and shall send a copy of such judgment, under the seal of the Court and the signature of the Registrar, to the Board which shall pass such orders as are necessary to dispose of the case conformably to such judgment.

(8) The costs of any reference to the High Court or to the Supreme Court shall be in the discretion of the Court.

(9) Notwithstanding that a reference has been made under this section to the High Court or to the Supreme Court, estate duty shall be payable in accordance with the determination made by the Board.

(10) For the purposes of this section "High Court" means the High Court to which, or to a court subordinate to which, an application for grant of representation has been made, or where no such application has been made, the High Court which would have jurisdiction to entertain such an application.

59. Case to be heard by Benches of High Courts and appeal to lie in certain cases to the Supreme Court.—(1) When a case has been stated to the High Court under section 58, it shall be heard by a Bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges:

Provided that where there is no such majority, the Judges shall state the point of law upon which they differ, and the case shall then be heard upon that point only by one or more of the other Judges of the High Court, and such point shall be decided according to the opinion of the majority of the Judges who have heard the case, including those who first heard it.

(2) An appeal shall lie to the Supreme Court from any judgment of the High Court delivered on a case stated under section 58 in any case which the High Court certifies to be a fit one for appeal to the Supreme Court.

(3) The provisions of the Code of Civil Procedure, 1908 (Act V of 1908), relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under this section in like manner as they apply in the case of appeals from decrees of a High Court:

Provided that nothing in the sub-section shall be deemed to affect the provisions of sub-section (7) of section 58:

Provided further that the High Court may, on petition made for the execution of the order of the Supreme Court in respect of any costs awarded thereby, transmit the order for execution to any court subordinate to the High Court.

(4) Where the judgment of the High Court is varied or reversed in appeal under this section, effect shall be given to the order of the Supreme Court in the manner provided in sub-section (7) of section 58.

60. Grant of representation not to be delayed on reference to High Court.—

Where any grant of representation has been applied for, it shall not be delayed by reason of any reference to a High Court under section 58.

61. Certificate of payment of duty, and penalty for non-payment.—(1) Where the valuation is amended by the person accountable upon the Controller's requisition under sub-section (1) of section 56 or is enhanced by the High Court upon the Board's reference under section 58, and in any case where the original valuation has been discovered to be too low, such person shall, within one month of the amendment or enhancement or discovery, pay the deficit duty which is payable in respect of the property upon the amended or enhanced or full valuation and the Controller shall thereupon grant him a certificate accordingly.

(2) Where the valuation is reduced by the High Court on the Board's reference under section 58, the Controller shall refund to the person accountable any excess duty paid by him and shall grant to him a certificate that the full duty payable in respect of the property has been paid.

(3) In any case where no account has been delivered as required by section 50 or clause (a) of section 53 the person who is called upon to accept the account prepared by the Controller under sub-section (2) of section 55 shall, within one month of his acceptance or, as the case may be, of the final disposal of the reference made under sub-section (1) of section 58, pay the full duty payable in respect of the property and the Controller shall thereupon grant him a certificate accordingly.

(4) If the person accountable does not pay the amount of duty due from him under sub-section (1) or sub-section (3) within the period specified therein, he shall be liable to a penalty of one thousand rupees or a sum equal to five times the amount due according as the Controller may elect :

Provided that the Controller may in any particular case reduce the penalty.

(5) Where a person accountable for the estate duty in respect of any property passing on a death applies to the Controller at any time and delivers and verifies a full statement to the best of his knowledge and belief of all property passing on such death and the several persons entitled thereto, the Controller may determine the estate duty payable in respect of the property and on payment of that duty, the Controller shall give him a certificate accordingly.

62. Commutation of duty in respect of interest in expectancy.—The Controller in his discretion may, upon application by a person entitled to an interest in expectancy, commute the estate duty which would or might, but for the commutation, become payable in respect of such interest for a certain sum to be presently paid, and, for determining that sum, shall cause a present value to be set upon such duty, regard being had to the contingencies affecting the liability to and rate and amount of such duty, and interest being reckoned at three per cent; and on the receipt of such sum the Controller shall give a certificate accordingly.

63. Assessment in complicated cases.—Where by reason of the number of deaths upon which property has passed or of the complicated nature of the interests of different persons in property which has passed on death, or from any other cause, it is difficult to ascertain exactly the amount of estate duty payable in respect of any property or any interest therein or so to ascertain the same without undue expense in proportion to the value of the property or interest, the Board, on the application of any person accountable for the duty and upon his giving to the Board all the information in his power respecting the amount of the property and the several interests therein and other circumstances of the case, may by way of composition for all or any of the duties payable in respect of the property or interest and the various interests therein or any of them, assess such sum on the value of the property or interest, as having regard to the circumstances appears proper, and may accept payment of the sum so assessed in full payment of all claims for estate duty in respect of such property or interest, and shall give a certificate accordingly.

64. Controller may allow postponement of payment on terms—Where the Controller is satisfied that the estate duty leviable in respect of any property cannot, without excessive sacrifice, be raised at once, he may allow payment to be postponed for such period, to such extent, and on payment of such interest not exceeding four per cent, or any higher interest yielded by the property, and on such other terms as he may think fit.

65. Board may remit duty and interest outstanding after twenty years from death—If after the expiration of twenty years from a death upon which estate duty became leviable any such duty remains unpaid, the Board may, if it thinks fit, on the application of any person accountable or liable for such duty or interested in the property, remit the payment of such duty or any part thereof or any interest thereon.

66. Forms—All affidavits, accounts, certificates, statements and forms used for the purposes of this Part of this Act shall be in such form and contain such particulars as may be prescribed by the Board and, if so required by the Board, shall be in duplicate and accounts and statements shall be delivered and verified on oath and by production of books and documents in the manner prescribed by the Board and any person who wilfully fails to comply with the provisions of this section shall be liable to the penalty mentioned in section 52.

67. Recovery of duty and penalties—Any estate duty or deficit duty and any interest or penalty payable under this Act may, on the certificate of the Controller, be recovered from the person liable thereto as if it were an arrear of land revenue by any Collector in any State.

PART VIII.—CHARGE OF ESTATE DUTY ON PROPERTY AND FACILITIES FOR RAISING IT.

68. Estate duty a first charge on property liable thereto—(1) Subject to the provisions of section 19, the estate duty payable in respect of property, movable or immovable, passing on the death of the deceased, shall be a first charge on the immovable property so passing (including agricultural land) in whomsoever it may vest on his death after the debts and incumbrances allowable under Part VI of this Act; and any private transfer or delivery of such property shall be void against any claim in respect of such estate duty.

(2) A rateable part of the estate duty on an estate, in proportion to the value of any beneficial interest in possession in movable property which passes to any person (other than the legal representative of the deceased) on the death of the deceased shall be a first charge on such interest:

Provided that the property shall not be so chargeable as against a *bona fide* purchaser thereof for valuable consideration without notice.

(3) The Board may release the whole or any part of any property, whether movable or immovable, from charge under this section in such circumstances and on such conditions as it thinks fit.

69. Discharge from estate duty in certain cases—A certificate granted by the Controller under section 61, or by the Board under section 63, shall discharge the property included therein and the grantee so far as regards that property from any further claim for estate duty, but shall not discharge any person or property from estate duty in case of fraud or failure to disclose material facts and shall not affect the duty payable in respect of any property afterwards shown to have passed on the death nor any further duty payable by reason thereof in respect of the property included in the certificate:

Provided nevertheless that a certificate purporting to be a discharge of the whole estate duty payable in respect of any property included in the certificate shall

exonerate a *bona fide* purchaser for valuable consideration without notice from the duty notwithstanding any such fraud or failure.

70. Person accountable to be repaid by trustees and owners in certain case.—If a person accountable under section 50 pays any part of the estate duty in respect of any property not passing to him, it shall, where occasion requires, be repaid to him by the trustees or owners of the property.

71. Facilities for paying duty or raising amount already paid.—(1) A person authorised or required to pay estate duty in respect of any property shall, for the purposes of paying the duty, or raising the amount of the duty when already paid, have power, whether the property is or is not vested in him, to raise the amount of such duty and any interest and expenses properly paid or incurred by him in respect thereof, by the sale or mortgage of or a terminable charge on that property or any part thereof.

(2) A person having an interest in any property, who pays the estate duty in respect of that property, shall be entitled to the like charge, as if the estate duty in respect of that property had been raised by means of a mortgage to him.

(3) Any money arising from the sale of property comprised in a settlement or held upon trust to lay out upon the trusts of a settlement may be expended in paying any estate duty in respect of property comprised in the settlement and held upon the same trusts.

PART IX.—MISCELLANEOUS

72. Jurisdiction of courts barred save as expressly provided.—Save as provided in this Act, nothing done or in good faith purporting to be done by any estate duty authority under this Act shall be called in question in any court.

73. Disclosure of information by a public servant.—The provisions of section 54 of the Indian Income-tax Act, 1922 (XI of 1922), shall apply to all accounts, statements, documents, evidence or affidavits, given, produced or obtained in connection with or in the course of the proceedings under this Act:

Provided that nothing in the said section 54 shall apply to the disclosure of any such particulars to any person acting in the execution of this Act or of the Indian Income-tax Act, 1922, where it is necessary or desirable to disclose the same to him for the purposes of either this Act or the said Act.

74. Rule-making powers of the Board.—Subject to the condition of previous publication, the Board may make rules not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out the purposes of or giving effect to this Act.

THE SCHEDULE

(See section 5)

States in which estate duty is leviable on agricultural land.

Bombay.
Orissa.
Uttar Pradesh.
Hyderabad.
Rajasthan.
Madhya Pradesh.

STATEMENT OF OBJECTS AND REASONS.

The object of the Bill is to impose an estate duty on property passing or deemed to pass on the death of a person. Though the levy and collection of income-tax at high rates since the War and investigations undertaken by the Income-tax Investigation Commission in a number of important cases of tax evasion have, no doubt, prevented to some extent the further concentration of wealth in the hands of those who are already wealthy, yet these do not amount to positive steps in the direction of reducing existing inequalities in the distribution of wealth. It is hoped that by the imposition of an estate duty such unequal distributions may be rectified to a large extent. Such a measure would also assist the States towards financing their development schemes. In their draft outline Report, the Planning Commission have, it will be recalled, stressed the necessity of undertaking legislation to levy death duties in India as early as possible.

2. A Bill seeking to impose such a duty was first introduced in 1946 and then re-introduced in the provisional Parliament in 1948. The latter Bill after being considered by the Select Committee lapsed on the dissolution of that Parliament. The present Bill is practically a reproduction of that Bill as reported on by the Select Committee, but certain changes have been made, which are as follows :—

(1) When the earlier Bill was drafted, the Centre had no jurisdiction to legislate in respect of agricultural land, but now some States have passed necessary resolutions under article 252 of the Constitution, and the Bill therefore applies also to agricultural lands in such States. As and when the remaining States pass the necessary resolutions, the Schedule will be amended by a Notification of the Central Government to include such States.

(2) In respect of the movable property of the deceased, the levy of duty will depend upon his domicile only. The alternative basis of residence in the Bill as amended by the Select Committee has been omitted.

(3) As in the case of Income-tax law, the fixation of the rates of duty and of the maximum limits of exemption will be regulated by the annual finance Acts.

(4) For the sake of administrative convenience, the power to assess duty is assigned to the Controller of Estate Duty, a new authority which will function under the Central Board of Revenue.

(5) Appeals from the orders of the Controller of Estate Duty will lie to the Central Board of Revenue, and, as in the Indian Income-tax Act, 1922, references to the High Court may be made on questions of law.

3. Under article 269 of the Constitution, the net proceeds of the estate duty will be assigned to the States on such principles of distribution as Parliament may hereafter formulate. The appropriate estate duty on agricultural land situate in a State will, of course, be assigned to that State.

C. D. DESHMUKH.

NEW DELHI;

The 2nd August, 1952.

Notes on Clauses.

In the drafting of the Bill including the definition and interpretation clauses (clauses 2 and 3) the U.K. Acts on the subject have been followed as closely as possible so that the assistance of the U.K. decisions may be available.

Clause 2.—The various sub-clauses define the terms used in the Bill. Sub-clauses (2), (3), (5), (6), (7), (10), (14), (17), (18) and (19) are self-explanatory.

Sub-clause (1).—Under section 19-I of the Court-fees Act, 1870, any person applying for the grant of a probate or letters of administration is required to file an affidavit in the prescribed form showing the valuation of the property and the credits which the deceased possessed or was entitled to at the time of his death and which had come or are likely to come in the hands of the applicant. This affidavit of valuation contains details of movable and immovable property along with a schedule of debts. Succession certificates are issued by the Court on payment of requisite stamp duty on the basis of such affidavit of valuation. Under clause 53 of the Bill, an executor is required to annex to the affidavit of valuation an account of all the property on which estate duty is payable and to send a copy thereof to the Controller of Estate Duty.

Sub-clause (4).—In the rules to be framed under clause 17 (4) "controlled company" will be defined in practically the same manner as in section 58 of the U.K. Finance Act, 1940, as amended from time to time. The reason why "controlled company" is not being defined in the Bill itself is that these provisions have been undergoing changes from time to time. These constant changes indicate the desirability of making the provisions flexible so as to meet new methods of evasion; hence their relegation to rules in the present Bill.

Sub-clause (8).—The definition of "executor" has been made sufficiently elastic to include every person who as executor, nearest of kin, or creditor or otherwise interferes with or enters upon the possession or management of the estate of the deceased with or without any grant of representation.

Sub-clause (9).—A person who has "general power" as defined in this sub-clause, is a person who is competent to dispose of property whether he is *sui juris* or not.

"General power" means complete authority to dispose of a property in any manner by the holder thereof.

Sub-clause (11).—Interest in expectancy is in contrast with the interest which has fallen into possession, but it does not mean that every interest not in possession is necessarily an interest in expectancy. An "interest in expectancy" is an interest which excludes its owner from the present beneficial enjoyment, being contingent upon the happening of another event. For instance if A bequeaths a property to B for life, and on his death to C then C's interest in the property is only an "interest in expectancy" which may or may not materialize.

Sub-clause (12).—The definition of "legal representative" was included by the Select Committee on the Estate Duty Bill of 1948. The definition is on the lines of that contained in the Civil Procedure Code, 1908, but it has been made clear that where the deceased is a co-parcener of a Hindu family the expression would include the manager for the time being of the family.

Sub-clause (13).—This is taken from the *Explanation* to section 69 of the Indian Succession Act, 1925.

Sub-clause (15).—*Explanations* (1) and (2) bring within the definition of "property" a debt or a right enforceable against a person when created by him or with his consent as also the benefit resulting from the extinguishment of a debt or a right at the expense of a deceased person.

Sub-clause (16).—Estate duty has been made payable on property that passes on death (see clause 5) and the definition of this expression has been so worded as to include all possible rights and interests that may pass on death.

Sub-clause (19).—The main question of fact that may have to be determined in the imposition of estate duty would be the market value of property; it has therefore been provided that the person accountable for estate duty would have the right to ask for the arbitration by a "Valuer" to be appointed by the Government. These valuers will be non-officials like the Board of Referees under the Excess Profits Tax Act.

Clause 3.—Clauses (a), (c) and (d) of sub-clause (1) are adapted from section 23 (2), U.K. Finance Act, 1894. Clause (b) is new.

Property which a person is legally competent to dispose of is deemed to pass on his death (*vide* clause 6) and is the property on which estate duty is leviable.

Sub-clauses (a) to (d) describe the various types of properties over which a person is deemed to have power of disposition. These are—

- (a) property over which a person has complete power of disposition,
- (b) property over which title is acquired in one form and it is disposed of in another form,
- (c) a disposition taking effect out of the person's own interest,
- (d) money which a person is competent to charge on the property of another person.

Sub-clause (2) is inserted to remove the possibility of doubt as to the scope of the provisions contained in Parts II and III of the Bill.

Clause 4.—This clause describes the various authorities for the purpose of administration of estate duty who will perform their function under the control of the Central Board of Revenue.

Clause 5.—From section 1, U.K. Finance Act, 1894.

See in this connection the definition of "property passing on the death" in clause 2 (16). The "passing" may be immediately on the death, as where A settles a fund upon himself for life, and then upon B absolutely; or it may be after an interval or at any period ascertainable only by reference to death, as where there is a trust for accumulation for a term after A's death. The passing may be certain, as in the first example above; or it may be contingent, as where A settles a fund upon himself for life, and then upon B, if and when B attains the age of 21 with accumulations. The passing may be original as in the first example above; or it may be by way of substitutive limitation, as where property is limited to A for life, remainder to B if living at A's death and in default (which happens) to C. In all these cases estate duty is chargeable on A's death.

Clause 6.—From section 2 (1) (a), U. K. Finance Act, 1894.

Property which the deceased was competent to dispose of or was deemed entitled to dispose of is deemed to pass on his death and estate duty is payable thereon.

Illustrations.—1. Property comprised in a revocable gift or settlement is clearly property of which the donor or settler is competent to dispose, irrespective of whether the gift or settlement was actually revoked or not.

2. A devises a house to his son, subject to a power for A's wife by deed or will to charge on it a sum of Rs. 1 lakh. On the wife's death, estate duty is leviable in respect of this sum as property of which she was competent to dispose and this is so whether she exercised the power or not. [See clause 3 (d).]

3. Under section 109 of the Indian Succession Act, 1925, a gift by will to the testator's child is preserved from lapsing where the beneficiary predeceases the testator provided that the beneficiary leaves issue living at the testator's death. The gift takes effect as if the beneficiary had died immediately after the testator and the property devolves under the beneficiary's will or intestacy. It is therefore property of which the beneficiary was competent to dispose and is chargeable with estate duty in connection with his death as well as in connection with the death of the testator, subject to any allowance for quick succession.

Clause 7.—From section 2 (1) (b), U. K. Finance Act, 1894.

Sub-clauses (2) and (3) were inserted by the Select Committee on the Estate Duty Bill, 1948, with other consequential modifications in sub-clause (1).

The cesser of interest on the deceased's death is property deemed to pass on his death and hence estate duty is payable thereon. In the case of a joint family property governed by the *Mitakshara*, no member has a distinct and specified interest in the coparcenary property of which he is competent to dispose but on the death of a member there is a cesser of interest in the joint family property. The clause provides that such cesser of interest is only liable to estate duty if the deceased was 18 years of age or if a minor no male ascendant of his was a coparcener in the same family. This provision is necessary as in *Mitakshara* family each child acquires interest in property and it would be administratively impossible to determine the quantum of interest on the death or birth of a child in the family.

Other examples of cesser of interest are—

(1) A by will gives an annuity of Rs. 500 to B charged on house property worth Rs. 1,200 per annum and the house property itself, subject to the afore-said charge, to C. On B's death the annuity ceases and estate duty is therefore chargeable on the value of the benefit arising by the cesser. Thus if the house property is worth Rs. 24,000 at B's death the value of the benefit would be

$$\frac{500}{1,200} \times 24,000 = 10,000.$$

(2) A is entitled to an annuity of Rs. 800 charged on certain house property and on A's death an annuity of Rs. 200 per annum becomes charged on the property in favour of B. In this case, upon A's death the owner of the property is chargeable to estate duty in respect of the cesser of the whole of A's annuity of Rs. 800 and not merely the cesser of Rs. 600 per annum which is the difference between the two annuities.

Clause 8.—From section 2 (1) (c), U. K. Finance Act, 1894.

As stated in the *Explanation* (which was added by the Select Committee on the 1948 Bill) gifts made in contemplation of death are dealt with in section 191 of the Indian Succession Act, 1925.

Clause 9.—From section 2 (1) (c), U. K. Finance Act, 1894, and section 59, U. K. Finance Act, 1910.

This clause brings under charge gifts made *inter vivos* within a period of two years before death or in the case of gift so made for a public charitable purpose made within six months before death. The time limit of two years and six months for three years and twelve months respectively was substituted by the Select Committee which also substituted the expression "public charitable purpose" for "public or charitable purposes".

Clause 10.—From section 2 (1) (c), U. K. Finance Act, 1894, and section 59, U. K. Finance Act, 1910.

This clause brings under charge property given in gift, but in which the donor retains some interest by contract or otherwise. Where the donor retains such interest in a part of the property only, estate duty is payable on that part only. But if such interest is surrendered two years before death no estate duty would be payable.

The right to possess under the terms of a gift is not possession; and it is payment, and not the obligation to pay, which confers enjoyment.

Clause 11.—From section 43, U. K. Finance Act, 1940.

This clause brings within the charge interest limited to cease on death which has been disposed of within two years of the death and which but for the disposition would have been caught by clause 5 as property passing on death, or as interest ceasing on death. However, if the interest is disposed of or determined in good faith,

two years before the death, no estate duty is payable. The provision is explained by the following illustration :—

A, a Hindu widow, having a Hindu woman's estate in house property surrenders her estate to the reversioners two years before her death. The property in such a case cannot be said to pass to the reversioners on her death, since it actually passes to them two years before. Therefore section 5 does not apply. Nor does section 7 apply, because the widow had, in the circumstances, no interest ceasing on her death: it had ceased two years previously. But, under sub-clause (1) the property is deemed to pass on her death and becomes chargeable to estate duty if the interest had not been surrendered 2 years before death. Under sub-clause (3), any artificial encumbrance created by the deceased is to be ignored.

Clause 12.—From section 2 (1) (c), U. K. Finance Act, 1894.

This clause brings under charge property under a revocable settlement or property in which the deceased retained some beneficial interest for his own benefit or for the benefit of his relatives.

Clause 13.—Determines the liability of property held jointly. The liability of the whole property to duty arises only in case where a person having been absolutely entitled to any property or to the funds with which any property was purchased has caused it to be transferred to or vested in himself and in any person jointly so that the beneficial interest in some part of the property passes or accrues by survivorship on his death to the other person. This clause does not apply to a case where the transferer was entitled only to a portion of the property or of the funds with which the property was purchased.

Clause 14.—From section 2 (1) (c), U.K. Finance Act, 1894 and section 76 of the U.K. Finance Act, 1948.

The clause brings under charge the money received under a life insurance policy kept up by a person for the benefit of a donee. The premium may be payable by the person out of any property settled by him or out of income arising under a settlement made by him. Where only a part of the premium is so paid the proportionate amount received under the policy will only be chargeable to duty.

Clause 15.—From section 2 (1) (d), U. K. Finance Act, 1894.

The general purpose of this provision is to prevent a man from escaping estate duty by reducing his estate, during life, by money or money's worth paid as premiums which, after his death, re-appear in the form of a beneficial interest accruing or arising on his death.

Clause 16.—From section 30, U.K. Finance Act, 1939, and section 26, U.K. Finance Act, 1943.

The purpose of this provision is to extend liability to duty to annuities and other interest which though not directly provided by the deceased are in substance attributable partly or wholly to property derived from him. The following illustration shows how this provision would operate :—

The deceased gave his children Rs. 20,000 with which they acquire shares in a private company. The company then lends the deceased Rs. 20,000 and uses the interest to pay the premiums on a policy effected on the deceased's life. The policy moneys would be considered under this provision to have been provided by the deceased.

Clause 17.—From section 42, U.K. Finance Act, 1940 and section 36, U.K. Finance Act, 1944.

Sub-clauses (1) (2) and (3).—The necessity for these provisions will be illustrated by the following example :—

A is the owner of an estate worth Rs. 12 lakhs including a residential house and of stocks and shares worth Rs. 8 lakhs. He forms a company with a nominal

capital of Rs. 20 lakhs divided into 50,000 five per cent preference shares and 150,000 ordinary shares, all of Rs. 10 each. He sells the estate and the securities to the company in consideration for the shares, of which 50,000 ordinary share are allotted to him and the rest to his wife and children. As part of the arrangement, he is appointed governing director for life at a salary of Rs. 50,000 per year and the residential house, whose annual value is Rs. 5,000 is let to him as governing director at a rent of Rs. 1,000 per year. On A's death more than two years later, estate duty would, *but for the provisions of this section*, be payable only in respect of the 50,000 shares which he retained. There was no gift to the company for the company gave full consideration. The only gift was a gift of the shares to his wife and children and that gift was not the subject to any reservation. But according to this provision the estate duty payable would be not on the market value of 50,000 ordinary shares but on such proportion of the assets of the company as the aggregate amount of benefits accruing to the deceased for the three years ending with his death bear to the income of the company for the same three years. Thus if the income of the company for the last three years were Rs. 3 lakhs, and the dividend declared on ordinary shares is Rs. 90,000, then the benefits enjoyed by the deceased are —

			Rs.
Salary as governing director	...	...	1,50,000
Residential house less rent paid	...	...	12,000
Dividend	...	...	30,000
			1,92,000

The assets which would be deemed to pass on his death would be of the value of—

$\frac{1,92}{3,00}$ of 20 lakhs.

or of Rs. 12,80,000 and not of Rs. 5 lakhs only.

Sub-clause (4).—There are numerous provisions on this subject in the U.K. Finance Act, 1940, which had better be relegated to rules so as to make them flexible to meet new methods of evasion. The constant changes made in the U.K. law in this behalf indicate that this course is preferable.

The proviso to sub-clause (4) was added by the Select Committee on the Estate Duty Bill, 1948.

Sub-clause (5).—From section 52, U.K. Finance Act, 1940.

The effect of this sub-clause is that the value of such property will be aggregated with other property of the deceased passing on his death.

Clause 18.—From section 53, U.K. Finance Act, 1940.

This clause lays the obligation on the company and its officers to inform the Controller of any transfer of property or benefits that accrued to the deceased from the controlled company.

Clause 19.—From section 54, U.K. Finance Act, 1940.

This clause determines the persons who shall be accountable for the payment of duty of a deceased on the death of the deceased on property transferred to a controlled company, and the powers conferred on the accountable parties for the purpose of raising and paying the duty.

Clause 20.—From section 2 (2), U.K. Finance Act, 1894 and section 24, U.K. Finance Act, 1936.

In the original Bills of 1946 and of 1948 the liability to estate duty on movable property depended on the 'domicile' of the deceased. The Select Committee however altered this and imposed the liability on all persons who are residents in

India, the definition of "resident" being more or less the same as in the Income-tax Act. The present clause reverts to the original provision that charge on foreign movable property would be on the basis of domicile. Sub-clause (2) provides that the rules regarding the nature and *situs* of the property will be framed by the Board and such rules will be framed with due regard to reasonable double estate duty relief arrangements which might be arrived at with the U.K. and U.S.A.

Clause 21.—From section 2 (3), U. K. Finance Act, 1894, and section 59, U. K. Finance Act, 1910.

Illustrations.—1. A dies leaving property of which he was a trustee for B under a will left by C. The property is not chargeable to estate duty upon A's death.

2. A dies leaving property of which he was a trustee for B under a deed of settlement made by A himself not more than two years before his death. The property is chargeable to duty, for otherwise any person could evade the duty by making such a trust shortly before his death and declaring thereby that he is a trustee for some named heir.

3. A dies leaving property of which he was a trustee for B under a deed of settlement made by A himself more than two years before his death, possession and enjoyment having been assumed by B immediately upon the creation of the trust and thenceforward retained to the entire exclusion of A. The property is not chargeable to duty upon A's death.

4. A dies leaving property of which he was a trustee for B under a deed of settlement made by A himself more than two years before his death, B having assumed possession immediately upon the creation of the trust, but being bound by an agreement to give A a share of the profits until A's death. The property is chargeable to duty upon A's death.

Clause 22.—From section 5 (3), U. K. Finance Act, 1894 and section 48, U. K. Finance Act, 1938.

Explanation (i) is derived from section 14, U. K. Finance Act, 1896.

Ex hypothesi in the case put in the *Explanation*, the interest of the deceased in the settled property fails before it becomes an interest in possession and in view of the decision in *A.G. v Wood* that an absolute reversion may be a limitation which continues to subsist, the *Explanation* is retained merely by way of abundant caution.

Explanation (ii) is derived from section 47 of the U. K. Finance Act, 1938, and was added by the Select Committee in order to make it clear that a residuary interest under reversion within an estate whose administration is not complete will not be regarded as a case of failure of interest before becoming interest in possession, but such interest would be deemed to have become interest in possession on the date as from which the income of the residue would have been attributable to that interest if the residue had been determined immediately after the death of the testator or intestate.

Clause 23.—From section 15, U. K. Finance Act, 1896.

Illustrations.—1. A settles property on trust for B (usually a poor relation or an old servant) for life and then for himself absolutely. No duty is payable on B's death, if he dies before A.

2. A settles property on trust to pay an annuity thereout to himself and, subject thereto, for B for life, with remainder to A. Duty is payable on B's death, because it cannot be said that only benefit retained by A is subject to the life interest.

3. A settles property on B for life with remainder to B's children absolutely and in default, for A absolutely. B dies without children. Duty is payable for the

contingent interests of B's possible children were "other interests" created by the disposition.

4. B gives property A, who then settles it on B for life with remainder to himself. Duty is payable on B's death, for B was competent to dispose of the property prior to the settlement.

5. As in *Illustration 1*, but B dies after A and the property reverts to A's heirs. Duty is payable on B's death, for the property does not revert to the disposer himself.

Clause 24.—From section 21(5), U. K. Finance Act, 1894.

Illustration.—A by deed dated 1951 settled property on his wife for life, and on her death on himself for life, with remainder to their children. The wife dies after the commencement of this Act, leaving A surviving. Estate duty is not payable on her death though it will be payable on the subsequent death of A. The exemption would not have applied if A had become entitled to the corpus on his wife's death.

Clause 25.—From section 3, U. K. Finance Act, 1894.

Property *bona fide* transferred by the deceased for money or money's worth is not chargeable to estate duty. Although such a transfer might be made in anticipation of death, the consideration received in respect of it becomes the property of the deceased and as such is liable to duty. To subject to taxation both the property whose sale produces that money or money's worth and that money or money's worth itself would be in substance to impose double taxation on the same property. Hence the exemption in this clause. The exemption is to apply not only when the property is acquired for full consideration in money or money's worth, but also to a proportionate extent, where part of the consideration is of that character.

Illustration.—On the marriage of A and B, A the husband, partly in consideration of the marriage and partly in consideration of the transfer to him of certain shares belonging to B, settled certain house property upon himself for life and then upon B absolutely. Here the consideration is only partly in money or money's worth, namely, so far as it consists of the shares. Hence under sub-clause (2), the value of the shares, as at the date of the settlement, is to be deducted from the value of the house property, as at A's death in ascertaining the sum in respect of which B is to pay an estate duty.

Clause 26.—From section 44, U. K. Finance Act, 1940.

Property transferred by the deceased in consideration of money or money's worth is not chargeable to estate duty (*vide* clause 25). This clause, however, provides that annuity or other interest limited to deceased on death, created in favour of the deceased cannot be treated as consideration or transfer when such transfers are made to a "relative" or to a "controlled company". The meaning of the expression "relative", "annuity" and "associated operations" as used in this clause has been defined. Nothing in this clause affects an annuity in favour of a person other than the deceased. The relaxations contemplated in section 40 of the U. K. Finance Act, 1944, will be considered by the Board when framing rules under clause 32. The deduction to be allowed will broadly be the net amount of benefit received by the deceased from the transactions.

Clause 27.—From section 17, U. K. Finance Act (No. 2), 1940.

In order to protect commercial transactions from higher duties imposed subsequent to the sale or mortgage of an interest in expectancy, this clause provides for relief to the purchasers and mortgagees and no other duty will be payable by them except the duty which would have been payable at the rates of estate duty, if any, in the case of a person dying at the time of the sale or mortgage.

Clause 28.—From section 5 (2), U.K. Finance Act, 1894 and section 13, U.K. Finance Act, 1898.

The exemption conferred by this clause is in respect of a settled property on which estate duty has been paid since the date of settlement on the death of one of the parties to a marriage. The exemption is, however, conditional and would not apply if the deceased was at any time during the continuance of settlement competent to dispose of the property.

Clause 29.—This clause empowers the Central Government to enter into an agreement for avoidance or relief of doubt taxation with the Government of any reciprocating country.

Clause 30.—From section 15, U.K. Finance Act, 1914.

It provides relief in respect of quick succession where property consists of land and business.

Clause 31.—This clause which was inserted by the Select Committee on the Estate Duty Bill, 1948, gives complete exemption of duty in respect of coparcenary interest devolving upon the members of the coparcenary or any of them upon the death of a Hindu widow if she dies within seven years of the death of her husband and if the estate duty has been levied in respect of the same on her husband's death.

Clause 32.—This clause is intended to cover, amongst others the deductions and relaxations provided for in section 51, Finance Act, 1940, and sections 38 and 40, U.K. Finance Act, 1944. The following are some of the exemptions which, if considered desirable, may be allowed under this clause :—

(a) Gifts not exceeding a certain limit.

(b) Gifts for national purposes.

(c) Property of a common seaman, marine, soldier or airman who is killed or dies in the service of the Union.

Clause 33.—From section 4, U.K. Finance Act, 1894, and section 12, U.K. Finance Act, 1900 and section 45 (3), U.K. Finance Act, 1940.

This clause lays down that for purposes of determining the rate of duty payable, all property will be aggregated except property in which the deceased *never* had an interest. The latter property is to be treated as an estate by itself. For instance, A dies leaving (i) Rs. 1 lakh in cash and (ii) a policy on his own life for Rs. 1 lakh absolutely and irrevocably nominated *from its commencement* in favour of B. Estate duty is chargeable on (i) under section 4 and on (ii) under section 13, but the two cannot be aggregated because A had never an interest in (ii), the interest arising only upon his death.

Clause 34.—This clause leaves the rate of duty to be fixed by a separate enactment.

Clause 35.—From section 7 (5), U.K. Finance Act, 1894 and section 60 (2), U.K. Finance Act, 1910.

This clause lays down the principle on which the principal value of any property is to be estimated for the purposes of estate duty.

Clause 36.—The clause lays down the manner in which the shares in a private limited company are to be valued when alienation of such shares is restricted. It embodies the principle enunciated in paragraph 275, Halsbury's Laws of England, Vol. XIII, Second Edition.

Clause 37.—From section 7(6), U.K. Finance Act, 1894.

It provides for the payment of estate duty on interest in expectancy either with the duty in respect of the rest of the estate or when the interest in expectancy falls in possession. In either case, the value of the other estate is to be aggregated.

Clause 38.—From section 7 (7), U.K. Finance Act, 1894.

This clause provides a formula for calculating the amount upon which duty is leviable on account of cesser of an interest. The effect of this clause is to charge

duty on a slice of the capital concerned, the income of which is equivalent to the income enjoyed by the deceased immediately before his death.

Clause 39.—From section 7 (8), U.K. Finance Act, 1894.

Under this clause the value of any property for the purpose of estate duty is to be determined by the Controller.

Clause 40.—From section 7 (9), U.K. Finance Act, 1894.

This is self-explanatory.

Clause 41.—From section 8 (8), U.K. Finance Act, 1894.

The object of this clause is to enable the persons primarily accountable for the payment of the estate duty to apportion the duty where necessary in administering the estate and to provide a method of ascertaining the proportion of duty which may be charged on a particular property and may be recoverable against a person having a charge on the property.

Clause 42.—From section 7 (1), U.K. Finance Act, 1894 and section 44 (1), U.K. Finance Act, 1940.

This clause specifies the deductions to be made (subject to restrictions) for determining the value of an estate. Allowance is to be made for reasonable funeral expenses and for debts and encumbrances but not for such debts which were not *bona fide*.

Clause 43.—From section 57, U.K. Finance Act, 1910.

Illustration.—Property is settled on A for life with remainder to his only son B. A, when in failing health, purchases B's remainder at a fair price, which in the circumstances is nearly the full value of the property, giving a promissory note or mortgage for the amount. Upon A's death, the property goes to B as his only heir. But for the present section, the amount of the debt would fall to be deducted under section 43, although the property would have devolved upon B even without the purchase. By virtue of the present section however no such deduction is permissible.

Clause 44.—From section 31, U.K. Finance Act, 1939.

Broadly the effect of this clause is to reduce the amount allowable as a deduction for a debt in proportion to the value of the consideration given for it which was derived directly or indirectly from the deceased or which was given by a creditor who acquired property from the deceased for the purpose of facilitating the loan.

Clause 45.—From section 7 (2), U.K. Finance Act, 1894.

This is in accordance with the established rule of law that debts claimable in the country where the assets are situate should be paid out of the assets in that country before any surplus is available for transmission to the country of the domicile.

Clause 46.—From section 7 (3), U.K. Finance Act, 1894.

This clause authorises the Controller to allow as a deduction from the value of the estate any additional expense in administering or realising the property situated out of India subject to a limitation of five per cent of the value of the property.

Clause 47.—From section 7 (4), U.K. Finance Act, 1894.

This clause provides for the deduction from the value of the property of the whole or any part of the duty of the nature of death duty paid in a non-reciprocat- ing country.

Clause 48.—Enables the Board to prescribe the manner in which estate duty may be collected.

Clause 49.—Adapted from section 34, U.K. Finance Act, 1917 and section 42, U.K. Finance Act, 1918.

The term "Government securities" is defined in the General Clauses Act, 1897.

Clause 50.—Adapted from section 8 (3) and 8 (4), U.K. Finance Act, 1894, section 16, U.K. Law of Property Act, 1925 and section 64 (8), U.K. Finance Act, 1940.

Sub-clause (2) [*see* section 8 (18), U.K. Finance Act, 1894].

Sub-clause (4) [*see* section 6 (3), U.K. Finance Act, 1894].

Sub-clause (5) [Halsbury's Laws of England, Vol. XIII, para. 298].

This clause defines liabilities of the different categories of persons who are accountable for the payment of estate duty, and the extent thereof.

Clause 51.—From section 8 (5), U.K. Finance Act, 1894, and section 57, U.K. Finance Act, 1940.

This clause provides the machinery for the collection of information and data for the purposes of administration of estate duty.

Clause 52.—From section 8 (6), U.K. Finance Act, 1894.

This is a penal clause for non-compliance with the requirements of sections 50 and 51, *i.e.*, failure to furnish the statement of accounts.

Clause 53.—Adapted from section 8 (3), U.K. Finance Act, 1894 and section 19-I, Court-fees Act, 1870.

Non-issue of grant of representations by the Court in the absence of a certificate from the Controller to the effect that the estate duty has been or will be paid, will act as deterrent to evasion of estate duty.

Clause 54.—From sections 6 (4), 6 (6), 6 (7) and 6 (8), U.K. Finance Act, 1894.

This clause fixes the time when the estate duty is due and details the procedure for collection when the amount due is determined.

Clause 55.—Adapted from section 11 (1), U.K. Finance Act, 1894.

The provision for grant of a certificate by the Controller either on payment of the duty or on furnishing adequate security for the duty is necessary as evidence of discharge of duty.

Clause 56.—Sub-clause (1) is adapted from section 19H (3), Indian Court-fees Act, 1870.

The necessity of providing for estimate to the best of the judgment of the Controller where no account has been delivered is evident. Provision exists for appeal against the valuation made and the estate duty determined by the Controller (*vide* clause 57).

Clause 57.—The right of appeal to the Board against valuation made or determination of the estate duty by the Controller is provided for in this clause. In case of a dispute relating to valuation of any property the appellant may require the Board to refer the question to the arbitration of the Valuers.

Clause 58.—Provision has been made in this clause for a reference to the High Court against the orders of the Board of any question of law arising out of such order.

Sub-clause (4) authorises the Board to refer a case direct to the Supreme Court on an application under sub-clause (1) if the question is of sufficient importance or if there is conflicting decision of different High Courts on the question involved.

Clause 59.—Details the manner of the formation of the High Court Bench and how the cases are to be decided upon. An appeal shall lie to the Supreme Court also from the judgment of any High Court in any case which the High Court certifies to be a fit one for appeal to the Supreme Court.

Clause 60.—Adapted from section 19-I (2), Court-fees Act, 1870.

Clause 61.—Adapted from sections 19E and 19G, Court-fees Act, 1870, section 11 (2), U.K. Finance Act, 1894 and section 14, U.K. Finance Act, 1907.

In the majority of cases, the procedure will be that the person accountable will first deliver an account under clause 50 (3) and pay duty on the property included therein under clause 55. Usually, the account may not be a complete one for it has to be filled within six months of the death and full details may not be available [see clause 50 (4)]. This preliminary account will serve as a notice of the death to the Controller, so that he may, if necessary, start making inquiries under clause 56. At a later stage, the persons accountable should be in a position to deliver a full statement, to pay the entire duty due, and to obtain a certificate of payment under sub-clause (1) or (5) of clause 61. In complicated cases, they can apply and obtain a certificate of payment under clause 63. It is only a certificate under clause 61 or clause 63 that discharges the property (see clause 69). A certificate under clause 55 suffices for a grant of representation so as to enable the grantee as early as possible to get in all the property vesting in him and to submit a full inventory as required by section 317, Indian Succession Act, 1925, but such a certificate does not operate as a discharge for the purposes of clause 69.

Clause 62.—Adapted from section 12, U.K. Finance Act, 1894.

This clause authorises the commutation of an estate duty that would be payable on an interest in expectancy when it falls, for a certain sum to be presently paid.

Clause 63.—Adapted from section 13, U.K. Finance Act, 1894.

This clause empowers the Board on the application of any person accountable for estate duty to accept composition for estate duty in certain complicated cases.

Clause 64.—Adapted from section 8 (9), U.K. Finance Act, 1894.

Where estate duty cannot be raised at once except by sale of property at excessive sacrifice due to adverse market conditions, the Controller is authorised to allow postponement of the recovery of the estate duty on payment of prescribed interest and on such other terms as the Controller may think fit. Power to extend time of payment or to allow payment of the demand in instalments is also exercised by Income-tax authorities as an administrative measure.

Clause 65.—Adapted from section 8 (14), U.K. Finance Act, 1894.

This clause vests the Board with power to remit the payment of estate duty or any part thereof or any interest thereon in fit cases if the duty remains unpaid after the expiration of 20 years from the date of death. The purpose of this provision is not to burden the administration with a heavy carry forward of uncollectable demands after all steps for realisation have been exhausted. Similar power to write off irrecoverable demands of income-tax are exercised by the Income-tax authorities under executive instructions.

Clause 66.—Adapted from section 8 (14), U.K. Finance Act, 1894.

Under this clause the forms, affidavits, accounts and certificates, etc., in connection with the administration of estate duty are to be in such forms containing such particulars, to be delivered and verified in such manner and by such documents as may be prescribed by the Board. This is analogous to the rule-making power of the Board in the administration of the Income-tax Act (section 59 of the Income-tax Act, 1922).

Clause 67.—Adapted from section 19 J (1), Court-fees Act, 1870.

This clause authorises the Controller to recover the estate duty, interest or penalty through certificate proceedings by the Collector and corresponds to section 46 (2), Indian Income-tax Act, 1922.

Clause 68.—This clause was inserted by the Select Committee on the Estate Duty Bill, 1948. The estate duty is made the first charge on movable and immovable property.

Clause 69.—Adapted from section 11 (2), (3) and (4), U.K. Finance Act, 1894.

Wide terms of this clause clearly indicate that fraud or failure to disclose material facts on the part of any person will render the certificate of discharge useless to any other person except to a *bona fide* purchaser for valuable consideration without notice.

Clause 70.—Adapted from section 9 (4), U.K. Finance Act, 1894.

Under this clause if any person accountable for estate duty pays any part of it in respect of any property not passing to him, he shall have the right to be repaid by the trustees or owner of such property.

Clause 71.—Adapted from section 9 (5), (6) and (7), U.K. Finance Act, 1894.

Any person who is authorised or is required to pay estate duty in respect of any property is empowered under this clause to raise the amount of such duty by the sale or mortgage or a terminable charge on that property for the purpose of paying duty or recouping the amount of duty if already paid.

Clause 72.—Adapted from section 67, Indian Income-tax Act, 1922.

This is a common feature to all revenue enactments.

Clause 73.—This provision is necessary because of the confidential nature of information, etc., obtained in connection with the execution of the enactment.

Clause 74.—This clause authorises the Board to make rules prescribing all matters for carrying out the purposes of or giving effect to the clauses of the Bill.

M. N. KAUL,

Secretary,